



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

TRANSMITTED VIA EMAIL
RETURN RECEIPT REQUESTED

Ken Graham, Chief of Operations
Pernod Ricard
2601 Whiskey Ranch Road
Fort Worth, Texas 76119
ken.graham@pernod-ricard.com

Re: Clean Air Act Information Request for Pernod Ricard's TX Whiskey Ranch

Dear Ken Graham:

The United States Environmental Protection Agency (EPA) hereby requires Pernod Ricard (Pernod Ricard or You) to provide certain information to determine the Clean Air Act (CAA or the Act) compliance status of its distilleries and rickhouses in Fort Worth, Texas.

Pursuant to section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of EPA is authorized to require any person who owns or operates an emissions source to establish and maintain records, make reports, install and use monitors, sample emissions (in accordance with the procedures and methods that the Administrator shall prescribe) and provide such other information as he may reasonably require for the purpose of, among other things, determining whether any person is in violation of the CAA. This authority has been delegated to the undersigned official. You are hereby required, pursuant to section 114(a) of the CAA, to provide responses to this Request (Information Request), within 30 calendar days from receipt of this Information Request. Instructions and definitions are provided in Enclosure 1 and the information requested is specified in Enclosure 2.

You are required to attach a properly executed Statement of Certification (see Enclosure 3) with your response to this Information Request. The statement must be signed and dated. You are under an obligation to preserve all Documents requested in this letter until you receive further instructions from EPA.

Failure to provide the required information is a violation of the Act and may result in one or more of the following actions: 1) issuance of an administrative penalty order pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d); 2) issuance of an order requiring compliance with this Information Request pursuant to section 113(a) of the Act, 42 U.S.C. § 7413(a); 3) initiation of a civil action pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b); and/or 4) initiation of any other action authorized under the Act. In addition, knowingly providing false

information in response to this Information Request may be actionable under section 113(c) of the Act, 42 U.S.C. § 7413(c), and 18 U.S.C. §§ 1001 and 1341. The information you provide may be used by EPA in administrative, civil, and criminal proceedings.

Under section 114(c) of the Act, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, including 40 C.F.R. § 2.301, you may assert a confidential business (CBI) claim on any information you provide to EPA that involves trade secrets and is regarded as CBI by you. Any asserted CBI claim must conform to the requirements of 40 C.F.R. § 2.203(b). Note that emission data cannot be claimed as confidential under section 114(c). For detailed instructions, please see Enclosure 4. Information that you claim as CBI will be handled in a manner that is consistent with EPA's CBI regulations under 40 C.F.R. Part 2, Subpart B. If a CBI claim does not accompany the information submitted to EPA, then EPA may make the information available to the public without further notice to you.

Please submit the requested information **electronically** to Ethan Chatfield, U.S. Environmental Protection Agency, at chatfield.ethan@epa.gov. Please note that the EPA server will not allow attachments over 20 MB and will not accept documents saved in a .zip file. Alternatively, You may want to provide documents in response to this Information Request by way of a secure file sharing site. Please let us know your preference for electronic document submittal.

If you have any questions regarding this information request, please contact Ethan Chatfield at (312) 886-5112. Alternatively, legal counsel for Pernod Ricard may contact Sabrina Argentieri at argentieri.sabrina@epa.gov or (202) 564-8953.

Sincerely,

Gregory Fried, Chief
Stationary Source Enforcement Branch
Air Enforcement Division

Enclosures: 1) Instructions and Definitions
2) Information Request
3) Statement of Certification
4) Confidential Business Information

ENCLOSURE 1

A. Instructions

1. Provide a separate narrative response to each request and subpart set forth in the Information Request. Provide copies of all Documents supporting your responses to this Information Request, such as performance test reports, inspection records, memorandums, facility records, permits, etc. If you have no responsive information or Documents pertaining to a particular request, submit an affirmative statement and explanation.
2. Precede each answer with the number of the request to which it corresponds and at the end of each answer identify the Person(s) (including name, title, and a description of job duties) who provided information that was used or considered in responding to that request, as well as each Person (including name, title, and a description of job duties) who was consulted in the preparation of that response.
3. Indicate on each Document produced in response to this Information Request, or in some other reasonable manner, the number of the request to which it corresponds. If a Document is responsive to more than one request, this must be so indicated and only one copy of the Document needs to be provided.
4. Narrative Documents should be provided in searchable electronic Portable Document Format (PDF) or in Word. Nonnarrative information should be provided in editable form, in spreadsheet format, preferably in Excel. All submitted Documents must be accurate and legible.
5. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner and the basis for the number provided (*e.g.*, estimated, measured or engineering judgment).
6. Where Documents or information necessary for a response are neither in Your possession nor available to You, indicate in Your response why such Documents or information are not available or in Your possession and identify any source that either possesses or is likely to possess such Documents or information.

B. Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the Clean Air Act or the regulations, in which case such definitions shall prevail.

Distillery means any place where alcohol is made by the processes of fermentation and distillation.

Document and the plural form thereof means all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "Document" shall include, but are not limited to: any receipts;

invoices; shipping records; purchase orders; purchase records; books; pamphlets; periodicals; memoranda (including those of telephone or oral conversations); contracts; correspondence; agreements; applications; financial records; security instruments; disbursements; checks; bank statements; time records; accounting or financial records; notes; diaries; logs; facsimiles (faxes); telegrams or cables prepared, drafted, received or sent; electronic mail (emails), whether drafted, received or sent; tapes; transcripts; recordings; minutes and notes of meetings; directives; work papers; charts; drawings; prints; flow sheets; photographs; infrared camera recordings; film; computer printouts; x-ray photographs; advertisements; catalogs; data; sampling reports, plans, protocols, reports, analyses; or any handwritten, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced, in Your possession, custody or control or to which You have or have had access.

Facility means all operations, including, but not limited to, the distillery, warehouses, rickhouses, located at 2601 Whiskey Ranch Road, Fort Worth, Texas and any associated adjacent or nearby buildings and operations owned or operated by Pernod Ricard.

Pernod Ricard means the distillery and any associated process, building, or facility owned and operated by Pernod Ricard and located in Fort Worth, Texas and/or any parent corporation, subsidiaries (whether wholly or partially owned), joint-ventures, or other business affiliates or any related entities associated with Pernod Ricard.

Owner or Operator means any Person who owns, leases, operates, controls, or supervises the Facility.

Person or its plural or any synonym thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local or any agency of the government of a foreign country) or any other entity.

Rickhouse means any location that is used for storing aging barrels of whiskey.

Ventilation means the continuous supply and removal of air into and out of a building or area, either by natural or mechanical means.

You and/or *Your* means Pernod Ricard and all its agents, servants, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, contractors, and others who are in possession, custody, or control (actual or constructive) of relevant information that is otherwise available to You, or may have obtained information for, or on Your behalf.

ENCLOSURE 2

You are hereby required, in accordance with Section 114(a) of the CAA, 42 U.S.C. § 7414(a), to provide the following information for the Facility(s) owned and operated by Pernod Ricard:

1. For each Rickhouse currently owned and/or operated or for which construction is planned, provide an Excel-compatible spreadsheet that contains:
 - a. the name of the site where the Rickhouse is located;
 - b. the full address of the site;
 - c. the maximum capacity of the Rickhouse (barrels);
 - d. the current number of barrels in the Rickhouse;
 - e. the name and address of the Distillery where the spirits contained in the Rickhouse were distilled;
 - f. date construction commenced on the Rickhouse (or is projected to commence);
 - g. date construction was completed on the Rickhouse (or is projected to be completed);
 - h. date that filling of the Rickhouse commenced;
 - i. date that the Rickhouse reached maximum (or near maximum) capacity;
 - j. Rickhouse wall construction material;
 - k. a description of the building's Ventilation. At a minimum, the response should include: a detailed description of how air enters and exits the Rickhouse (*e.g.*, there are 3 doors on the ground floor, 8 windows on each floor of X-inches by X-inches in size, and 20 air vents located along the peak of the Rickhouse that are 10-inches in diameter as shown on the attached diagram and vent directly to the outside), whether windows stay are opened or closed, whether the Ventilation system is passive or active, whether there are maximum and minimum temperature settings that would trigger venting or cooling, whether VOC concentration levels are monitored and whether high levels trigger venting, and a description of any air handling units/systems, and;
 - l. a description of any air emission capture and control systems installed (if any).
2. If any of the Rickhouses have ethanol, VOC, or other emission monitoring systems, provide a description of such monitoring system and a description of where and why it was installed. Provide a copy of any associated and applicable OSHA requirements or permits.
3. For any Rickhouse constructed in the past 10 years, provide a copy of the construction documents of the building (including the construction and mechanical drawings and the layout of any Ventilation systems).
4. Provide copies of any air permit applications submitted and air permits received from January 1, 1990 to the date of this Information Request for any facility owned and/or operated by Pernod Ricard or any prior owner or operator.
5. Provide a current plot or aerial map (with scale) of the Facility identifying each major piece of process equipment, stack, chimney, emission point, vent, Rickhouse (with designated building number), and other significant features.

ENCLOSURE 3

Statement of Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations pursuant to section 113(c)(2) of the Clean Air Act, and 18 U.S.C. §§ 1001 and 1341.

(Signature)

(Printed Name)

(Title)

(Date)

ENCLOSURE 4

Confidential Business Information (CBI) Assertion

You may assert a business confidentiality or CBI claim covering all or part of the information you provide in response to this Information Request for any business information you believe may be entitled to confidential treatment under section 114(c) of the Clean Air Act (the Act), 42 U.S.C. § 7414(c); Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4); and 40 C.F.R. Part 2, Subpart B. Under section 114(c) of the Act, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Exemption 4 under FOIA protects “trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential[.]” 5 U.S.C. § 552(b)(4). Under 40 C.F.R. Part 2, Subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a CBI claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in section 114(c) of the Act, Exemption 4 under FOIA, and 40 C.F.R. §§ 2.201-2.311. **If a CBI claim does not accompany the information submitted to EPA, then EPA may make the information available to the public without further notice to you.** See 40 C.F.R. § 2.203(c).

To assert a CBI claim, you must place on (or attach to) all information you desire to assert as CBI either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this information request.

Allegedly confidential portions of otherwise non-confidential information should be clearly identified and may be submitted separately to facilitate identification and handling by EPA. Please be specific by page (including Bates Stamp, if applicable), paragraph, and sentence when identifying the information subject to your claim. Where your claim does not include all information on a page, please place brackets around, or otherwise designate, the text that you claim to be CBI. Please note that if a page, document, group or class of documents claimed by you to be CBI contains information which EPA determines is not CBI, your CBI claim regarding that page, document, group, or class of documents may be denied. All confidentiality claims are subject to EPA verification. If EPA reviews your CBI claim(s), EPA may send notice to your business and ask you to submit additional information to substantiate the CBI claim(s). See 40 C.F.R. § 2.204(e).

In making its final confidentiality determination, EPA will consider the relevant substantive criteria in its CBI regulations, 40 C.F.R. § 2.208(a)-(d), as well as the U.S. Supreme Court’s decision in *Food Marketing Institute v. Argus Leader Media* (*Argus*), 139 S. Ct. 2356 (2019), which evaluated the definition of “confidential” as used in Exemption 4 under FOIA. In the *Argus* decision, the Court held that at least where “[1] commercial or financial information is both customarily and actually treated as private by its owner and [2] provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of

Exemption 4.” *Argus*, 139 S. Ct. at 2366. The definition of “trade secret” under FOIA is limited to “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). This definition requires that there be a “direct relationship” between the information at issue and the production process. *Id.*

For each item or class of information that you claim as CBI, please answer the following questions, giving as much detail as possible. EPA will use your responses to these questions to determine whether the information has been shown to be entitled to confidential treatment:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph, and sentence when identifying the information subject to your claim.
2. For what period of time do you request that the information be maintained as confidential, *e.g.*, until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. Is there any other explanation you deem relevant to the EPA’s determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

By submitting this information, you are consenting to a limited release of any confidential business information to EPA interns and contractors pursuant to 40 C.F.R. § 2.209(f). EPA’s interns and contractors are required to sign confidentiality agreements as a requirement of their participation in EPA-related matters.

Emission data, as defined at 40 C.F.R. § 2.301(a)(2)(i), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. *See* 42 U.S.C. § 7414(c); 40 C.F.R. § 2.301(e). Emission data is defined as:

(A) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;

(B) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under an applicable standard or limitation, the source was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source); and

(C) A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

40 C.F.R. § 2.301(a)(2)(i).